

Janet T. Mills
Governor

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Commissioner



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State of Maine Health Inspection Program

Refilling Returnables Policy

The Health Inspection Program (HIP) has provided the following guidance for licensees when establishments choose to refill returnable containers in their operations. The current 2013 Maine Food Code section 3-304.17 prohibits this however, HIP recently adopted, as policy, the requirements for the reusable packaging section 3-304.17 of the 2017 FDA Food Code for retail food establishments, which will replace sections 3-304.17 and 4-603.17 of the Maine Food Code.

This policy provides guidance for HIP inspections, including a variance approval process for HIP establishments that are refilling returnable food containers.

For more information, please contact your Health Inspector or the HIP main line at 207-287-5671.

I. 3-304.17 Refilling Returnables. (2017 FDA Food Code)

3-304.17 Refilling Returnables.

(A) Except as specified in ¶¶ (B) - (E) of this section, empty containers returned to an eating establishment for cleaning and refilling with food shall be cleaned and refilled in a regulated Food Processing Plant.

(B) A take-home food container returned to an eating establishment may be refilled at an eating establishment with food if the food container is:

- (1) Designed and constructed for reuse and in accordance with the requirements specified under Part 4-1 and 4-201.11, 4-202.11 of the Maine Food Code.
- (2) One that was initially provided by the eating establishment to the consumer, either empty or filled with food by the eating establishment, for the purpose of being returned for reuse.
- (3) Returned to the eating establishment by the consumer after use.
- (4) Subject to the following steps before being refilled with food:
 - (a) Cleaned as specified under Part 4-6 of the Maine Food Code,
 - (b) Sanitized as specified under Part 4-7 of the Maine Food Code; and
 - (c) Visually inspected by a food employee to verify that the container, as returned, meets the requirements specified under Part 4-1, 4-201.11, and 4-202.11; *and*
 - (d) Stored and handled in accordance with Part 4-9 of the Maine Food Code.

(C) A take-home food container returned to an eating establishment may be refilled at an eating establishment with beverage if:

- (1) The beverage is not a Potentially Hazardous Food (PHF) Time/Temperature Control for Safety Food (TCS) as defined in the Maine Food Code,
- (2) The design of the container and of the rinsing equipment and the nature of the beverage, when considered together, allow effective cleaning at home or in the eating establishment,
- (3) Facilities for rinsing before refilling returned containers with fresh, hot water that is under pressure and not recirculated are provided as part of the dispensing system,
- (4) The consumer-owned container returned to the eating establishment for refilling is refilled for sale or service only to the same consumer; and
- (5) The container is refilled by:

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- (a) An employee of the eating establishment, or
- (b) The owner of the container if the beverage system includes a contamination-free transfer process as specified under §§ 4-204.13(A), (B), and (D) of the Maine Food Code that cannot be bypassed by the container owner.

(D) Consumer-owned, personal take-out beverage containers, such as thermally insulated bottles, non-spill coffee cups, and promotional beverage glasses, may be refilled by employees or the consumer if refilling is a contamination-free process as specified under §§ 4-204.13(A), (B), and (D) of the Maine Food Code.

(E) CONSUMER-owned containers that are not food-specific may be filled at a water vending machine or system.

II. Variance and Approval Process

- (A) All eating establishments that provide refilling returnable services per this policy, must first submit a completed variance form for HIP's review and approval.
- (B) Once HIP receives the variance form, the inspector will conduct an inspection of the eating establishment to review policies and procedures to ensure proper ware-washing techniques for cleaning, rinsing, sanitizing and storage of reusable takeout containers.
- (C) If a third-party system of reusable containers is used by the establishment, the establishment must have a contract with the third-party company that allows inspection by HIP of the third-party facility and any remote drop-off locations utilized for the temporary storage of the used reusable containers to ensure sanitary conditions. A copy of the contract with the third-party company is to be submitted to HIP at the time the variance is submitted. The contract must specify that the third-party company agrees to inspection of its facility and any remote drop off locations. The inspector will inspect the third-party facility to review their policies and procedures to ensure proper ware-washing, rinsing, and sanitizing, in addition to the cleanliness of facility and the storage of the reusable takeout containers. If remote locations are utilized by the third-party company for the drop off of used reusable containers, the drop off locations must be kept clean and be protected from pests.
 - (1) The eating establishment will bear the additional inspection fee cost, if over two inspections occur within the establishment's annual license year.
 - (2) If the third-party inspection is a failed inspection or does not comply with the Maine Food Code, and the eating establishment and third party are unwilling to correct the violations, then HIP will inform the establishment that they will not be approved to use the third-party refillable returnable services.
 - (3) The inspector will note all Maine Food Code violations for the third-party facility on the licensed eating establishments inspection report and provide the inspection report to the owner or person in charge.
- (D) The inspector will provide the inspection report to the owner and inform HIP management of their recommendations.
- (E) HIP management will review the inspector's recommendations. The variance form will be approved or disapproved by signature and provided to the inspector and the licensed eating establishment.